IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. ANTONIO CAMACHO VALDEZ, Appellant.	)	2 CA-CR 2006-0209 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR20031527 and CR20053733

Honorable Stephen C. Villareal, Judge

AFFIRMED

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B R A M M E R, Judge.

¶1 In CR20053733, a jury found appellant Antonio Valdez guilty of aggravated assault with a deadly weapon or dangerous instrument and aggravated assault causing serious physical injury. The jury also found that Valdez had a prior felony conviction in CR20031527 and was on probation for that offense when he committed the offenses charged

in CR20053733. Additionally, the jury found Valdez guilty of two counts of possession of a deadly weapon by a prohibited possessor, one based on his probation status and the other on his previous felony conviction. In CR20031527, the trial court found, based on the conviction in CR20053733, that Valdez had violated the terms and conditions of his probation.

¶2 Valdez argues on appeal that the trial court erroneously admitted evidence of his prior acts and the prior inconsistent statements of the victim, Ana M. He also contends the court erred by sentencing him under A.R.S. § 604.02(A), asserting the jury did not find that his previous conviction involved the use or exhibition of a dangerous weapon. Finally, he contends that, should we reverse his conviction in CR20053733, we must vacate the revocation of his probation in CR20031527.[1] We affirm.

Factual and Procedural Background

¶3 On appeal, "[w]e view the facts in the light most favorable to sustaining the verdict[s]." *State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408 (2003). On September 3, 2005, Valdez shot Ana, his girlfriend, as she returned home from a shopping trip. She had driven her van to the store at about 4:00 a.m. When she returned to the home she shared with Valdez and their four children, Valdez, holding a gun, approached the driver's side of the van. After accusing Ana of cheating on him, he shot her in the arm. The bullet traveled

[1]Although the notice of appeal filed by Valdez's trial counsel only listed CR20053733, Valdez's pro se notice of appeal, filed five days later, listed both case numbers. Because both case numbers were docketed under this appeal, and our resolution of his appeal in CR20031527 depends on our resolution of his appeal in CR20053733, we address both cases in this decision.

through her arm and into her chest. Valdez then accompanied Ana as she drove herself to the hospital for treatment. She was released from the hospital approximately two days later.

¶4 Although Ana initially told police she did not know who shot her, she later stated Valdez had pointed the gun at her and shot her after accusing her of cheating. She also told a detective that Valdez "didn't mean" to shoot her. At trial, she did not testify Valdez had accused her of cheating on him and initially asserted she did not recall what Valdez had told her. She later admitted, however, she had told a detective that Valdez had told her, "I saw you, I saw you, I saw you over there cheating on me," before he shot her. She also testified that the gun went off when she tried to grab it out of Valdez's hand, but did not remember if she had told that to the police.

¶5 When interviewed by police, Valdez initially denied shooting Ana, claiming he had been inside sleeping when he heard a gunshot and ran outside to find she had been shot. He later told police: "I . . . shot her. I don't deserve to live. I'm sorry. I just shot my girlfriend. I shot my baby. I shot her in the arm. I . . . can't believe it." He did, however, claim it had been "an accident."

¶6 Valdez was indicted for aggravated assault with a deadly weapon or dangerous instrument, aggravated assault causing serious physical injury, and two counts of prohibited possession of a firearm, one based on his previous felony conviction and the other on his probation status. The jury found him guilty of all four charges. Subsequently, the parties "agree[d] that, due to the jury verdicts in CR20053733, [Valdez] does not have to make admissions to the allegations in the Petition to Revoke Probation." Thus, based on those jury verdicts, the trial court found Valdez had "violated the terms and conditions of his

probation." The trial court sentenced Valdez to the statutory maximum of a twenty-year prison term for each aggravated assault and the presumptive term of 4.5 years for each prohibited possession of a firearm conviction, with all sentences to be served concurrently, but consecutively to the presumptive 3.5-year prison term for his probation violation. This appeal followed.

Discussion

Prior Act Evidence

¶7 At a pretrial status conference, the parties discussed the admissibility of evidence of Valdez's actions that had resulted in his prior conviction for aggravated assault against Ana. Apparently, Valdez had fired a gun during that incident, and Ana had "asked for leniency" for Valdez. The state asserted it was likely Ana would testify that the shooting here had been an accident. The state argued the evidence was admissible under Rule 404(b), Ariz. R. Evid., 17A A.R.S., to demonstrate that Valdez was familiar with firearms and, thus, was evidence the shooting had not been accidental. The state also asserted the evidence was relevant to Ana's credibility because it demonstrated she had previously "requested leniency" for Valdez and was therefore evidence of her "motive to claim that [the shooting in this case] was an accident." Over Valdez's objection, the trial court ruled the state could ask Ana about the incident if she testified the shooting was accidental.

¶8 During trial, Ana agreed the shooting was "[d]efinitely" an accident. She also agreed that "on a prior occasion," Valdez had "actually fired a weapon." She further admitted there "had been an incident where [she had] asked the prosecutor and the Court to be lenient on [Valdez]." She was not asked if Valdez's previous firing of a weapon and the

incident for which she asked for leniency were the same event, and there was no other evidence concerning the facts of Valdez's prior use of a gun.

¶9 On appeal, Valdez argues "[t]he state failed to prove the prior act by clear and convincing evidence," and the prior act evidence was irrelevant. Evidence of prior acts "is not admissible to prove the character of a person in order to show action in conformity therewith" but may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ariz. R. Evid. 404(b). We review a trial court's admission of evidence under Rule 404(b) for an abuse of discretion. *State v. Van Adams*, 194 Ariz. 408, ¶ 20, 984 P.2d 16, 23 (1999).

¶10 Valdez first argues "[t]here was no evidence that the prior firing of a weapon was unlawful, intentional, accidental, or reckless, which was needed to establish relevance to the question whether this shooting was accidental. Consequently the state failed to prove the prior bad act by clear and convincing evidence." *See State v. Terrazas*, 189 Ariz. 580, 582, 944 P.2d 1194, 1196 (1997) ("[F]or prior bad acts to be admissible in a criminal case, the profferer must prove by clear and convincing evidence that the prior bad acts were committed and that the defendant committed the acts.") (emphasis deleted). Valdez's argument is difficult to understand; whether the state proved he committed the prior act and whether that evidence was relevant are separate issues. Ana testified without contradiction that Valdez had previously fired a gun. This evidence was sufficient to meet the required burden of proof to demonstrate he had done so. *Cf. State v. Munoz*, 114 Ariz. 466, 469, 561 P.2d 1238, 1241 (App. 1977) (even uncorroborated testimony of victim sufficient evidence

to support conviction). Insofar as Valdez asserts the evidence of the prior act was irrelevant, we address those arguments below.

¶11 Valdez next argues "[t]he prior shooting was too dissimilar to this shooting because they did not involve the same mental state." He asserts "[t]he state wanted to prove that this shooting was not an accident by proof that a previous shooting was intentional," and a "prior act is not probative unless it involved the same state of mind." *See, e.g., United States v. Mark*, 943 F.2d 444, 448 (4th Cir. 1991) ("Where [extrinsic act and charged offense] are sufficiently related, the relevance of the evidence 'derives from the defendant's having possessed the same state of mind in the commission of both the extrinsic act and the charged offense.'"), *quoting United States v. Dothard*, 666 F.2d 498, 502 (11th Cir. 1982); *United States v. Cardenas*, 895 F.2d 1338, 1343 (11th Cir. 1990) (same).

¶12 Valdez's argument misapprehends the state's purpose in questioning Ana at trial about Valdez's previous use of a firearm. During the pretrial argument on this issue, the state maintained the evidence was relevant because it demonstrated that Valdez "knows that by pulling a trigger, . . . a gun's going to go off"—not because Valdez's previous firing of a gun had been intentional or accidental. Although the parties discussed the evidence in terms of whether this shooting had been a mistake or accident under Rule 404(b), the state's argument to the trial court made it clear the purpose of the prior act evidence was to demonstrate Valdez knew about firearms and their operation. Such knowledge lent support to an inference that the shooting had not been an accident. And evidence demonstrating knowledge is properly admissible under Rule 404(b). That Valdez might have had a different

mental state when he previously fired a gun did not mean that evidence was irrelevant to whether he knows how firearms operate.

¶13 In a related argument, Valdez asserts "[t]he prior shooting was irrelevant because there was no evidence that [he] claimed that it was an accident." He reasons that, without evidence that his previous firearm discharge was accidental, it was not probative of whether his shooting of Ana was accidental under the "doctrine of chances." The doctrine of chances "posits that the more often an accidental or infrequent incident occurs, the more likely it is that its subsequent reoccurrence is not accidental or fortuitous." *Westfield Ins. Co. v. Harris*, 134 F.3d 608, 615 (4th Cir. 1998); *see also* 2 John Henry Wigmore, *Evidence in Trials at Common Law* § 302, at 241 (Chadbourn rev. 1979) ("[A]n unusual and abnormal element might perhaps be present in one instance, but that the oftener similar instances occur with similar results, the less likely is the abnormal element likely to be the true explanation of them.").

¶14 That doctrine, however, does not apply here. The state did not argue at trial that Valdez's previous firing of a weapon made it more likely, as a matter of mathematical probability, that this shooting was intentional. Indeed, there were no underlying facts presented at trial about his prior firing of a gun. The state instead argued that Valdez's previous firearm discharge was evidence of his knowledge about guns and, consequently, that such knowledge made it more likely that Ana's shooting had not been accidental. As we have determined, the evidence was properly admissible for that purpose.

Ana's Prior Inconsistent Statements

¶15 Valdez next contends the trial court erred by admitting Ana's prior inconsistent statements "for substantive purposes," arguing the prejudicial effect of the statements outweighed their probative value.[2] *See* Ariz. R. Evid. 403, 17A A.R.S. ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice."). Ana testified that Valdez had approached her while she was in her van as she returned from the store. She said Valdez was talking to her, but she did not "really remember too much. He was mumbling." Ana did testify, however, that "he had said he wanted to hurt himself." She stated she saw the gun in his hand and had been trying to grab it when it went off.

¶16 Before trial, Ana spoke on different occasions to three police officers about the shooting. On the day of the shooting, while she was at the hospital, she told one officer that she did not see the person who shot her and admitted at trial having made the statement. That same day, she told another officer that Valdez had pointed a gun at her, called her a "fucking bitch," accused her of "seeing other people," and shot her. Ana testified she did not remember making those statements, but also said she had not been "really paying attention to anything" because she thought she "was dying on the table." She also testified she had confused Valdez's statements to her then with a previous argument she had had with him.

¶17 Five days after the shooting, during an interview at the police station with a detective, Ana reiterated that Valdez had accused her of being unfaithful and that she had

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[2]Valdez also asserts the admission of Ana's prior inconsistent statements violated his "rights to due process and a fair trial under the state and federal constitutions." Because he did not develop this argument, however, we do not address it. *See Lohmeier v. Hammer*, 214 Ariz. 57, n.5, 148 P.3d 101, 108 n.5 (App. 2006).

seen the gun in his hand and told him to put it away. Ana also told the detective that Valdez "didn't mean to do it." At trial, she admitted telling the detective that Valdez had accused her of cheating on him and that she had told him to put the gun away. She did not tell any of the officers that she had tried to grab the gun.

¶18 Under Rule 801(d)(1)(A), Ariz. R. Evid., prior inconsistent statements by a witness who is subject to cross-examination are not hearsay. Such statements, however, are not admissible if, under Rule 403, Ariz. R. Evid., their "probative value is substantially outweighed by the danger of prejudice." *See State v. Allred*, 134 Ariz. 274, 277-78, 655 P.2d 1326, 1329-30 (1982); *see also State v. Sucharew*, 205 Ariz. 16, ¶ 20, 66 P.3d 59, 66 (App. 2003).

¶19 Because Valdez did not object to the admission of any of Ana's prior inconsistent statements, he has "forfeit[ed] the right to obtain appellate relief unless [he] prove[s] that fundamental error occurred." *State v. Martinez*, 210 Ariz. 578, n.2, 115 P.3d 618, 620 n.2 (2005). Fundamental error is "'error going to the foundation of the case, error that takes from the defendant a right essential to [the] defense, and error of such magnitude that the defendant could not possibly have received a fair trial.'" *State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005), *quoting State v. Hunter*, 142 Ariz. 88, 90, 688 P.2d 980, 982 (1984). "To prevail under this standard of review, a defendant must establish both that fundamental error exists and that the error in his case caused him prejudice." *Id.* ¶ 20. "Before we may engage in a fundamental error analysis, however, we must first find that the trial court committed some error." *State v. Lavers*, 168 Ariz. 376, 385, 814 P.2d 333, 342 (1991); *see also Henderson*, 210 Ariz. 561, ¶ 23, 115 P.3d at 608.

¶20 Valdez has failed to show error, much less fundamental error. In *Allred*, our supreme court outlined several factors a trial court should consider in conducting a Rule 403 balancing test of evidence of prior inconsistent statements:

> 1) the witness being impeached denies making the impeaching statement, and
>
> 2) the witness presenting the impeaching statement has an interest in the proceeding and there is no other corroboration that the statement was made, or
>
> 3) there are other factors affecting the reliability of the impeaching witness, such as age or mental capacity,
>
> 4) the true purpose of the offer is substantive use of the statement rather than impeachment of the witness,
>
> 5) the impeachment testimony is the only evidence of guilt.

134 Ariz. at 277, 655 P.2d at 1329.

¶21 Valdez admits "the first two factors do not weigh against the statements' admission." He asserts the third factor weighed against admission because Ana "admitted that her mental faculties were adversely affected when the shooting occurred and when she spoke to the police." The third *Allred* factor, however, does not apply to an impeached witness, but instead, to an impeaching witness—here, the police officers. *See Sucharew*, 205 Ariz. 16, ¶ 22, 66 P.3d at 67 (interested party and reliability inquiry focuses on impeaching witness); *State v. Miller*, 187 Ariz. 254, 258, 928 P.2d 678, 682 (App. 1996) (same). Nothing in the record suggests their reliability was suspect.

¶22 As to the fourth factor, although Ana's prior statements were probative of whether the shooting had been accidental—that Valdez had accused her of infidelity and had

pointed the gun at her—their primary purpose was to impeach her. In three previous conversations with police, Ana had never asserted she had attempted to grab the gun away from Valdez. And evidence that her stories were inconsistent might have cast general doubt on her credibility. Accordingly, the fourth *Allred* factor did not weigh against admission. Nor did the fifth. There was other evidence that the shooting had not been, as Valdez asserts, an accident "result[ing] from . . . [Ana]'s intervening act of grabbing the gun." As we have discussed, Ana's testimony that Valdez had previously fired a gun permitted the jury to infer he had knowledge of firearms operation—such as how to fire one by pulling the trigger. And a firearms examiner for the Tucson Police Department testified the revolver Valdez had used to shoot Ana would discharge only if the trigger had been "pulled and held back" and would not fire if someone "simply str[uck] the trigger momentarily from the front." Accordingly, the trial court did not commit error by failing sua sponte to exclude evidence of Ana's prior inconsistent statements.

Sentencing

¶23 The jury found that the first aggravated assault with a deadly weapon or dangerous instrument count against Valdez was "a dangerous offense involving the use and/or threatening exhibition of a deadly weapon, to wit: a gun." It also found the second count of aggravated assault causing serious physical injury was a dangerous offense involving the intentional or knowing infliction of serious physical injury. Additionally, on both counts one and two, the jury found that Valdez had a prior felony conviction in CR20031527 and that, when he shot Ana, he was on probation for that conviction.

¶24 Accordingly, the trial court sentenced Valdez pursuant to A.R.S. § 13-604.02(A). The second sentence of that statute requires a trial court to sentence a defendant to the maximum authorized sentence if: 1) the defendant is convicted of a felony that involved "the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction on another of serious physical injury"; 2) the defendant is on probation for a serious offense as defined in A.R.S. § 13-604, which includes aggravated assault "involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument," § 13-604(W)(4)(d); and 3) the previous offense "result[ed] in serious physical injury or . . . involv[ed] the use or exhibition of a deadly weapon or dangerous instrument." § 13-604.02(A). Thus, after finding Valdez had previously been convicted of "Aggravated Assault, Deadly Weapon/Dangerous Instrument, a Gun, Domestic Violence," the trial court sentenced Valdez to a twenty-year prison term for each aggravated assault count—the maximum term. *See* § 13-604(J).

¶25 On appeal, Valdez asserts he "could not be sentenced under A.R.S. § 13-604.02(A) unless the jury found that the prior conviction involved the use or exhibition of a deadly weapon." He reasons, that, without that specific jury finding, his sentences violate the rule in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). We review a challenge to the legality of a sentence de novo. *State v. Johnson*, 210 Ariz. 438, ¶ 8, 111 P.3d 1038, 1040 (App. 2005). Under *Apprendi*, "any fact other than the existence of a prior conviction that increase[s] the defendant's punishment beyond the . . . 'statutory maximum' must be submitted to a jury and found beyond a reasonable doubt." *State v. Brown*, 209 Ariz. 200,

¶ 7, 99 P.3d 15, 17 (2004), *quoting Apprendi*, 530 U.S. at 490, 120 S. Ct. at 2362-63. In Arizona, the statutory maximum is the presumptive term. *See id.* ¶ 12.

¶26 Valdez relies solely on this court's decision in *State v. Leon*, 197 Ariz. 48, 3 P.3d 968 (App. 1999), asserting that case requires that, for a defendant to be sentenced under the second sentence of § 13-604.02(A), "the finding required is not the fact of a prior conviction. Instead, [*Leon*] requires a finding about the facts of the underlying case." Thus, he reasons, "[b]ecause the statute requires a factual finding, the issue was one for the jury to decide."

¶27 Valdez misinterprets our holding in *Leon*. In *Leon*, the defendant was sentenced under the second sentence of § 13-604.02(A) based on his prior conviction for disorderly conduct. 197 Ariz. 8, ¶¶ 1, 5, 3 P.3d at 969. His prior conviction was designated as nondangerous at sentencing, and he contended that, because the state had not alleged the prior offense was dangerous, he should have been sentenced to the presumptive term as required by the first sentence of § 13-604.02(A). 197 Ariz. 48, ¶ 4, 3 P.3d at 969. We rejected this argument, stating "[t]he fact that the prior offense has been designated 'nondangerous' under § 13-604 is . . . irrelevant to the court's enhancement of the sentence under the second sentence of § 13-604.02(A)." 197 Ariz. 48, ¶ 7, 3 P.3d at 970. Instead, enhancement under the second sentence of § 13-604.02(A) requires only "a finding that [the defendant] was on release . . . for a prior felony conviction involving the use or exhibition of a deadly weapon or dangerous instrument." 197 Ariz. 48, ¶ 8, 3 P.3d at 970. Because the defendant had been convicted under A.R.S. § 13-2904(A)(6), which necessarily involves the

use or exhibition of a deadly weapon, we concluded his sentence was properly enhanced. 197 Ariz. 48, ¶ 8, 3 P.3d at 970.

¶28 Thus, our holding in *Leon* was not, as Valdez suggests, based on the "facts of the underlying case" but instead on the elements of the crime of which the defendant had previously been convicted. As we have noted, the fact of a prior conviction is exempt from the rule in *Blakely*. *See Brown*, 209 Ariz. 200, ¶ 7, 99 P.3d at 17. Because a previous conviction for aggravated assault with a deadly weapon or dangerous instrument necessarily meets the requirements of the second sentence of § 13-604.02(A), Valdez's sentences could properly be enhanced under that statute without the jury's making a specific factual finding that Valdez's prior conviction had involved the use or exhibition of a deadly weapon or dangerous instrument.

¶29 The trial court found at sentencing that Valdez had a prior conviction for "Aggravated Assault, Deadly Weapon/Dangerous Instrument, a Gun, Domestic Violence." Although Valdez failed to raise this issue at trial, *see Martinez*, 210 Ariz. 578, n.2, 115 P.3d at 620 n.2, or on appeal, we directed the parties to file supplemental briefs on the issue of whether the state presented sufficient evidence to support that finding, and if not, whether the insufficiency constituted fundamental, prejudicial error. *Cf. State v. Henderson*, 210 Ariz. 561, n.6, 115 P.3d 601, 611 n.6 (2005) (Hurwitz, J., concurring) ("An appellate court may find fundamental error even if the issue is not raised on appeal by a defendant. . . . In cases where there is any doubt as to whether an error not addressed in the defendant's brief is prejudicial, an appellate court raising the issue *sua sponte* should ask for supplemental

briefing, thus allowing the defendant to discharge the burden [of demonstrating prejudice].") (citations omitted).

¶30 "When the prosecution alleges a prior conviction, it must prove two facts: (1) that the defendant in the present case and the one convicted in the prior case are the same individual, and (2) that there was in fact a prior conviction." *State v. Nash*, 143 Ariz. 392, 403, 694 P.2d 222, 233 (1985). For the purpose of sentence enhancement, the state is required to prove a prior conviction by clear and convincing evidence. *State v. Cons*, 208 Ariz. 409, ¶ 15, 94 P.3d 609, 615 (App. 2004). In *State v. Hauss*, 140 Ariz. 230, 681 P.2d 382 (1984), our supreme court clarified the procedure for establishing that a defendant has a prior conviction. The court stated: "[T]rial courts must not . . . consider the reliability and sufficiency of non-documentary evidence offered to establish the fact of a prior conviction." *Id.* at 232, 681 P.2d at 384. Instead, the state must introduce reliable documentary evidence of the prior conviction and establish that the defendant is the person to whom those documents refer. *See id.* at 231, 681 P.2d at 383; *see also State v. Robles*, 213 Ariz. 268, ¶¶ 16-17, 141 P.3d 748, 753 (App. 2006). Such evidence is "necessary to ensure that proceedings to determine the existence of prior convictions do not become credibility contests between, for instance, probation officers and defendants convicted of the principal offense" because such proceedings would "impos[e] an unnecessary burden on the court" and would "likely be unfair to defendants as it is not difficult to predict how juries would resolve them." *Hauss*, 140 Ariz. at 231, 681 P.2d at 383.

¶31 During trial, the court, without objection from Valdez, admitted into evidence a certified copy of the sentencing minute entry in CR20031527, that named "Antonio

Camacho Valdez" as the defendant. Valdez admits this document is sufficiently reliable evidence of the fact of a prior conviction. *See Robles*, 213 Ariz. 268, ¶ 16, 147 P.3d at 753. Accordingly, the only issue before us is whether the state produced sufficient evidence to prove Valdez is the person named in that document. *See Nash*, 143 Ariz. at 403, 694 P.2d at 233.

¶32 At trial, a Pima County probation officer identified Valdez as "Antonio Camacho Valdez" and testified Valdez was on probation for a felony on September 3—the date Valdez shot Ana. Valdez argues this evidence was insufficient to link him to the sentencing minute entry "because the probation officer did not identify Valdez as the person convicted of th[e] specific felony [described in the sentencing minute entry], nor did the state have its fingerprint expert compare the print on the sentencing minute entry with Valdez's." But it was not necessary for the probation officer to explicitly state Valdez was the same person named in the minute entry if his testimony and the other evidence in the record permitted that inference. *See State v. Terrell*, 156 Ariz. 499, 503, 753 P.2d 189, 193 (App. 1988) ("[A] prior conviction can be proved by many different forms of evidence."). And, although evidence matching Valdez's fingerprint to the one on the sentencing minute entry would have been the best evidence linking Valdez to that document, it was not the only means by which the state could meet its burden. *See, e.g., State v. McAlvain*, 104 Ariz. 445, 447, 454 P.2d 987, 989 (1969) ("Although a comparison by an expert of the fingerprints on the exhibit with those of appellant might have established the prior conviction more conclusively [than a photograph alone], we cannot say that there is not substantial evidence to support the jury's verdict.").

¶33 Had the probation officer merely testified that an "Antonio Camacho Valdez" had a prior felony conviction, that evidence would clearly have been insufficient. *See State v. Pennye*, 102 Ariz. 207, 208, 427 P.2d 525, 526 (1967) ("[T]he mere identity of a name on an exemplified copy of a prior conviction and the defendant's name . . . is not sufficient evidence to rebut the presumption of innocence."). As we noted, however, the probation officer also identified Valdez and testified Valdez had been on probation at the time he shot Ana. The sentencing minute entry, dated August 28, 2003, stated "Antonio Camacho Valdez" would be placed on probation for five years—which would obviously include the date Valdez shot Ana. Although not the best evidence, the facts that the probation officer identified Valdez as having a prior felony conviction, that his name appeared on the sentencing minute entry, and that both Valdez and the person named in the sentencing minute entry were on probation at the time Valdez shot Ana strongly suggest they are the same person. *See State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005) ("In determining whether substantial evidence exists, we view the facts in the light most favorable to sustaining the jury verdict and resolve all inferences against [the defendant]."); *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005) ("The substantial evidence required for conviction may be either circumstantial or direct.").

¶34 In addition, when questioned by the trial court at the sentencing hearing, Valdez admitted his date of birth was December 7, 1969—the same date of birth listed on the sentencing minute entry from the prior conviction. Although we do not condone the method by which the state presented any of this evidence, we conclude that, in its entirety, it was sufficient for the court to clearly and convincingly find that Valdez and the person

identified in the sentencing minute entry are the same. *See Nash*, 143 Ariz. at 403, 694 P.2d at 233; *Cons*, 208 Ariz. 409, ¶ 15, 94 P.3d at 615.

Sufficiency of the Evidence

¶35 Valdez also contends the evidence of the prior felony conviction was insufficient to support his conviction for prohibited possession of a firearm based on that prior felony. *See* A.R.S. §§ 13-3101(A)(6), 13-3102(A)(4). A conviction must be supported by substantial evidence. *See* Ariz. R. Crim. P. 20, 17 A.R.S.; *State v. Roque*, 213 Ariz. 193, ¶ 93, 141 P.3d 368, 393 (2006). "Substantial evidence is 'such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Roque*, 213 Ariz. 193, ¶ 93, 141 P.3d at 393, *quoting State v. Roseberry*, 210 Ariz. 360, ¶ 45, 111 P.3d 402, 411 (2005) (internal quotation marks omitted). For the reasons explained above, even without Valdez's statement at the sentencing hearing of his birth date, the evidence presented at trial is sufficient for the jury to conclude Valdez and the person named in the sentencing minute entry in CR20031527 were the same person.

Disposition

¶36 We affirm Valdez's convictions and sentences.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge